

**EXECUTIVE SUMMARY OF CHANGES  
SUPERINTENDENT'S PROPOSED COMPENDIUM  
2012  
GATES OF THE ARCTIC NATIONAL PARK AND PRESERVE**

Gates of the Arctic National Park and Preserve is seeking public comment on the park's proposed 2012 Superintendent's Compendium. The attached proposed compendium is a written compilation of designations, closures, permit requirements and other restrictions adopted under the Superintendent's discretionary authority. After review and consideration of the need for annual updates, the following changes are proposed.

**2.4(a)(2)(i) Carrying, using, or possessing weapons**

This section has been modified to clarify that public use cabins are not considered federal facilities where firearms are prohibited.

**2.10(d) Food storage: designated areas and methods**

The NPS received feedback suggesting this provision could be modified to provide the superintendent discretion to accommodate other appropriate food storage practices as well as the ability to make exceptions on a case by case basis when complying with the requirements would be overly burdensome or impossible and would not pose an undue risk of wildlife obtaining food from humans. The NPS is proposing to modify this provision to allow the superintendent to make exceptions or authorize other practices on a case by case basis.

The reasons for this change include:

- A public safety and resource conservation concern exists when wildlife obtain food from people or associate humans with any form of nutritional reward. The intent of the regulations is prevent wildlife from obtaining food from humans or associating humans with food.
- The NPS recognizes that other storage practices may be appropriate and deviations from this policy may be warranted in certain circumstances.

This provision has also been modified to clarify that bait being lawfully used in accordance with applicable state or federal law is not considered food which is subject to the provisions in this section.

**2.14(a)(9) Sanitation: designated areas for disposal of human waste in undeveloped areas**

This section has been modified to reflect appropriate practices for disposal of human waste during winter months.

**3.14(a) Conditions for removing sunken, grounded, or disabled vessels**

This section was modified to make clear that a permit is not required for vessels that can be safely bailed out, ungrounded, or repaired on site safely by the operator if there is no potential for damage to resources.

**GATES OF THE ARCTIC NATIONAL PARK AND PRESERVE  
PROPOSED COMPENDIUM  
2012**

National Park Service (NPS) regulations applicable to the protection and equitable public use of units of the National Park System grant specified authorities to a park superintendent to allow or restrict certain activities. NPS regulations are found in Titles 36 and 43 of the Code of Federal Regulations (CFR) and created under authority and responsibility granted the Secretary of Interior in Titles 16 and 18 of the United States Code. The following compendium comprises a listing of NPS regulations that provide the Superintendent with discretionary authority to make designations or impose public use restrictions or conditions in park areas. The applicability and scope of the compendium is articulated in 36 CFR Sections 1.2 and 13.2, and 43 CFR Section 36.1.

The larger body of NPS regulations that do not provide discretionary authority to the Superintendent is not cited in this compendium. A complete and accurate picture of regulations governing use and protection of the unit can only be gained by viewing this compendium in context with the full body of applicable regulations found in Titles 36 and 43 CFR. *Please contact Gates of the Arctic National Park and Preserve, Bettles, Alaska at (907)692-5494 for questions relating to information provided in this compendium.*

**TITLE 36 CODE OF FEDERAL REGULATIONS**

**PART 1. GENERAL PROVISIONS**

**1.5 Closures and public use limits**

**(a)(1) Visiting hours, public use limits, closures**

See specific sections in this document for additional information regarding visiting hours, public use limits, and closures.

**(a)(2) Designated areas for specific use or activity or conditions**

See specific sections in this document for additional information regarding designated areas and conditions for engaging in certain activities.

**1.6(f) Compilation of activities requiring a permit**

- Scientific research, 1.5
- Collecting research specimens, 2.5
- Operating a power saw in developed areas, 2.12(a)(2)
- Operating a portable motor or engine in undeveloped areas, 2.12(a)(3)
- Operating a public address system, 2.12(a)(4)
- Air delivery, 2.17(a)(3)
- Noncommercial soliciting, 2.37
- Using, possessing, storing, or transporting explosives, blasting agents, or explosive materials, 2.38(a)
- Using or possessing fireworks and firecrackers, 2.38(b)
- Special events, 2.50(a)

- Public assemblies and meetings, 2.51
- Sale and distribution of printed matter, 2.52
- Grazing, 2.60(a)(1),(2); reindeer grazing, 2.60(a)(1), re: 16 USC 410hh, 25 USC 500
- Residing on federal lands, 2.61(a)
- Installing a monument or other commemorative installation, 2.62(a)
- Towing a person using a parasail, hang glider, or other airborne device, 3.12(b)
- Removing sunken, grounded, or disabled vessels, 3.14(a)
- Operating a submersible, 3.19
- Commercial notices or advertisements, 5.1
- Commercial operations, 5.3
- Commercial photography or filming, 5.5
- Construction or repair of any building, structure, facility, road, trail, or airstrip on federal lands, 5.7
- Mining operations (9.9(a)) or an approved Plan of Operations (in lieu of permit))
- Cabins on federal lands, 13.100-13.188
- Subsistence use in Gates of the Arctic National Park by a person who does not live within the Park boundary or a resident zone community, 13.440(a)
- Using aircraft access for subsistence activities in the Park by residents of Anaktuvuk Pass, 13.450(a), (b)(1), 13.1004
- Cutting of live standing timber greater than 3 inches in diameter for non-commercial subsistence uses, 13.485(a)(1)
- Access to inholdings where access is not made by aircraft, snowmachine, motorboat or non-motorized surface transportation, 43 CFR 36.10(b)
- Salvaging, removing, possessing aircraft, 43 CFR 36.11 (f)(3)(ii)
- Helicopter landings, 43 CFR 36.11(f)(4)
- Off-road vehicle (ORV) use, 43 CFR 36.11(g)(2)
- Temporary access across federal land for survey, geophysical or exploratory work, 43 CFR 36.12(c)

## **PART 2. RESOURCE PROTECTION, PUBLIC USE AND RECREATION**

### **2.1(a)(4) Designated areas for collection of dead wood on the ground for firewood**

Superseded by 13.35(c)(4), 13.35(d), and 13.85(b).

### **2.1(a)(5) Designated areas and conditions for walking on, climbing, entering, ascending, descending, or traversing an archeological or cultural resource, monument, or statue**

No designated areas or conditions.

### **2.1(b) Designated trails**

No restrictions on walking or hiking.

### **2.1(c)(1)-(3) Designated fruits, nuts, berries, and unoccupied seashells to harvest by hand and collection restrictions**

Superseded by 13.35(c) and 13.485(b).

**2.2(d) Established conditions and procedures for transporting lawfully taken wildlife through park areas**

See also 13.40(d)(5).

**2.2(e) Designated areas for wildlife viewing with artificial light**

No areas designated for closure.

**2.3(d)(2) Fresh waters designated as open to bait fishing with live or dead minnows or other bait fish, amphibians, nonpreserved fish eggs or fish roe**

No waters are designated as open to fishing with the types of bait identified above. Other types of bait may be used in accordance with state law. Subsistence fishing by federally qualified rural residents is allowed in accordance with 36 CFR part 13 and 50 CFR part 100.

**2.4(a)(2)(i) Carrying, using, or possessing weapons at designated locations and times**

Individuals are authorized to possess firearms in NPS areas in accordance with applicable state and federal law. With the exception of public use cabins, possession of firearms is prohibited in Federally-owned or leased buildings. The laws regarding discharge of firearms remain unchanged.

See also 13.50(b)-(f).

**2.10(a) Camping: conditions and permits**

No established conditions or permits required.

Camping on gravel bars is encouraged to avoid damage to vegetation.

Superseded in part by 13.25.

*Camping on gravel bars is consistent with the Leave No Trace principle of “travel and camp on durable surfaces” and is a widely recognized best practice.*

**2.10(d) Food storage: designated areas and methods**

(1) Definition: A *bear resistant container* (BRC) means an item constructed to prevent access by a bear. BRC’s include—

- Items approved by the Department of Interior and Agriculture’s Interagency Grizzly Bear Committee ( <http://www.igbconline.org/html/safety.html>);
- Any additional items listed by the State of Alaska, Department of Fish and Game, Division of Wildlife Conservation (<http://www.wildlife.alaska.gov/index.cfm?adfg=bears.containers> ), with the concurrence of the Superintendent;
- Items or methods approved by the Superintendent.

(2) Throughout the park, all food (except legally taken game) and beverages, food and beverage containers, garbage, harvested fish and equipment used to cook or store food must be stored in a bear resistant container (BRC) or secured—

- Within a hard sided building;
- Within lockable and hard sided section of a vehicle, vessel, or aircraft; or

- By caching a minimum of 100 feet from camp and suspending at least 10 feet above the ground and 4 feet horizontally from a post, tree trunk or other object on a line or branch that will not support a bear's weight.
  - The Superintendent may, upon request, waive or modify food storage requirements in circumstances where compliance with these requirements is not possible, overly burdensome, and is not inconsistent with public safety and wildlife conservation interests.
- (3) This provision does not apply to—
- Food that is being transported, consumed or prepared for consumption; and
  - Clean dishes and cooking equipment free of food orders.
  - Bait which is being lawfully used for trapping or hunting in accordance with applicable state or federal is not considered food subject to the provisions in this section.

*The intent of these designations is to prevent bears and other wildlife from obtaining and habituating to food and garbage, thus protecting wildlife and park visitors alike. We strongly recommend that dishes and cooking equipment be securely stored; but clean and odor free items are not required to be stored in secure containers. Ice chests and coolers, tents, dry bags or stuff sacks, plastic packing boxes (Totes, Action Packers, etc) and unmodified kayaks are not generally approved as BRC.*

## **2.11 Picnicking: designated areas**

Superseded by 13.26.

## **2.13(a)(1) Fires: designated areas and conditions**

Designated Areas: Campfires are authorized in all areas without a permit. All trash (tin foil, burnt food, glass, and cans) must be removed from the fire site after use.

*The intent of this requirement is to allow for fires in the backcountry while ensuring that resource impacts associated with fires are minimized. The use of fire pans and construction of fires on gravel bars is encouraged to ensure that permanent campfire sites and build up of ash piles will not occur.*

## **2.14(a)(2) Sanitation and refuse: conditions using government receptacles**

No conditions established at present. Dumping commercial, household, or industrial refuse, brought in from private or municipal property, in government receptacles is prohibited.

## **2.14(a)(5) Sanitation: designated areas for bathing and washing**

No designated areas. The area does not have any public water facilities.

## **2.14(a)(7) Sanitation: designated areas for disposal of fish remains**

Fish entrails may be deposited on land along the Kobuk River drainage, as long as they are deposited greater than 100 feet from a campsite.

*The intent of this condition is to respect local native custom and culture in which fish entrails are left on land for other animals to scavenge.*

**2.14(a)(9) Sanitation: designated areas for disposal of human waste in undeveloped areas**

When the ground is not frozen, human feces must be either packed out or deposited in a “cathole” dug 6-8 inches deep in soil at least 100 feet from any water source, shoreline, campsite or trail. When the ground is frozen, human feces must be disposed over at least 100 feet from any water source and covered with snow or packed out.

Tissue paper and sanitary items should be buried, burned or packed out.

*The intent of these conditions is to provide for healthy, sanitary and visually aesthetic environments as well as to protect natural resources.*

**2.14(b) Sanitation: conditions concerning disposal, carrying out of human waste**

See section 2.14(a)(9) above. Toilet paper should be packed out, or burned when fire hazard is low.

**2.15(a)(1) Areas designated as closed to pets**

No designated areas. Pets must be leashed or physically restrained at all times.

**2.15(a)(3) Conditions for leaving pets unattended and tied to an object**

No conditions at present.

*Leaving pets unattended and tied to an object is prohibited.*

**2.15(a)(5) Pet excrement disposal conditions**

No conditions at present.

**2.15(b) Conditions for using dogs in support of hunting activities**

No conditions at present.

**2.16 (a)-(c) Horses and pack animals**

Superseded by 43 CFR 36.11(e).

**2.17(a)(1) Aircraft operation**

Superseded by 43 CFR 36.11(f)(1).

Use of aircraft in the Park for subsistence purposes is prohibited under 36 CFR 13.450.

See also 13.450, 13.1004 regarding use of airplanes in the Park for subsistence by Anaktuvuk Pass residents.

**2.17(a)(2) Aircraft operation near docks, piers, swimming beaches and other designated areas**

No areas prohibited.

**2.17(c)(1) Conditions for removing downed aircraft**

Superseded by 43 CFR 36.11(f)(3)(ii).

**2.18(c) Snowmobiles: designated areas for use**

No areas designated for snowmachine use.

Superseded in part by 43 CFR 36.11(c).

Superseded by 36 CFR 13.460 for subsistence uses.

**2.19(b) The towing of persons on skis, sleds, or other sliding devices by motor vehicle or snowmobile is prohibited, except in designated areas or routes**

No designated areas or routes.

**2.20 Skating and skateboards**

Superseded by 43 CFR 36.11(e).

**2.21 Smoking**

All park offices and visitor facilities are closed to smoking.

Smoking is prohibited within 100 feet of the park fuel and aviation gas storage facility.

*These restrictions are intended to protect public safety from fire or explosion around fuel storage and dispensing facilities.*

**2.22 Property: leaving property unattended for longer than 24 hours**

Superseded by 13.45.

**2.35(a)(3)(i) Alcoholic beverages: areas designated as closed to consumption**

No areas designated as closed.

**2.38(b) Fireworks: permits, designated areas, and conditions**

No areas designated for use of fireworks.

**2.51 Public assemblies/meetings: designated areas for public assemblies**

All areas open to public assemblies with a permit from the superintendent.

**2.52 Sale and distribution of printed matter: areas designated for such use**

All areas are open to distribution with a permit from the superintendent.

**2.60(a)(3) Designated areas for grazing**

Grazing of pack or saddle animals by private parties, not to exceed 14 days, is authorized without a permit in all areas. Any feed brought in must be weed free. Grazing in support of commercial operations is only allowed under permit from the superintendent.

*These restrictions seek to lessen the impact of extended camps on vegetation.*

**2.62(b) Memorialization: designation of areas for scattering ashes**

All areas are open to scattering of ashes without a permit.

**PART 3. BOATING AND WATER USE ACTIVITIES**

### **3.3 Permits**

No permits required at present.

### **3.7 Personal Flotation Devices: designated times and/or activities**

No designated times or activities. PFDs must be worn in accordance with 33 CFR part 175.

### **3.8(a)(2) Boating, prohibited operations: designated launching areas**

All areas are open to launching of boats.

### **3.8(a)(4) Operating a vessel in excess of designated length, width, or horsepower**

No designations at present.

### **3.8(b)(3) Operating a vessel in excess of flat wake speed in designated areas**

No designated areas.

### **3.12(a) Water skiing: designated waters**

No areas designated open.

### **3.14(a) Conditions for removing sunken, grounded, or disabled vessels**

A permit is required from the Superintendent before sunken, grounded, or disabled vessels may be removed from waters within NPS administered areas except when the operator is able to remove or repair the vessel on site safely and without potential for damage to resources.

*This requirement allows the Superintendent to establish terms and conditions for salvage operations as necessary to protect resources and provide for public safety.*

### **3.16 Swimming and wading: areas designated as closed**

All areas are open to swimming and wading.

### **3.17(a) Designated swimming areas and beaches**

No designated areas.

### **3.17(c) Use or possession of flotation devices, glass containers, kites, or incompatible activities in swimming areas or beaches**

No restrictions at present.

### **3.18(a) SCUBA and underwater diving: closures and restrictions**

No closures or restrictions at present.

## **PART 4. VEHICLES AND TRAFFIC SAFETY**

### **4.10 Routes or areas designated for off-road motor vehicle use in Preserves**



No routes or areas designated.  
See also 43 CFR 36.11(g).

**4.11(a) Load weight and size limits: permit requirements and restrictive conditions**

No restrictions at present.

**4.30(a) Routes designated as open to bicycles**

Superseded by 43 CFR 36.11(e).

**4.30(d)(1) Wilderness closed to bicycle use**

Superseded by 43 CFR 36.11(e).

**4.31 Hitchhiking: designated areas**

All areas are open to hitchhiking.

**PART 5. COMMERCIAL AND PRIVATE OPERATIONS**

**5.7 Construction of buildings, roads, trails, airstrips, or other facilities**

Maintenance of established landing strips utilizing non-motorized hand tools is not considered construction or repair and no permit is required.

**PART 13. ALASKA REGULATIONS**

**13.25(a) Temporary closures and restrictions to camping**

No closures or restrictions at present.

**13.25(b) Site time limits: authorization to exceed 14 day limit at one location**

No general exceptions at present.

**13.25(c) Designated campgrounds: restrictions, terms, and conditions**

No designated campgrounds.

**13.26 Picnicking-areas where prohibited or otherwise restricted**

No restrictions.

**13.50(b) Temporary closures or restrictions to carrying, possessing, or using firearms**

There are no additional restrictions.

**13.35(d) Collection of dead standing wood: areas designated as open and conditions for collection**

No designated areas.

**13.35(f)(1) Natural features: size and quantity restrictions for collection**

No restrictions at present.

**13.35(f)(2) Natural features: closures or restrictions due to adverse impacts**

No closures or restrictions at present.

**13.40(e) Temporary closures or restrictions to the taking of fish and wildlife**

- From October 15 through April 30, artificial light may not be used to take a black bear at a den site except to retrieve a dead bear or dispatch a wounded bear as authorized by state law.
- From October 15 through April 30, a person may not take a cub bear or a female bear accompanied by a cub bear at a den site.

See applicable State of Alaska hunting regulations. Sport hunting is prohibited in Gates of the Arctic National Park.

**13.45(b)(1)-(6) Exceptions to unattended or abandoned property**

Subsistence users are exempt from the requirements in (b)(1)-(6). Other authorizations for exceptions for unattended or abandoned property are made on a case by case basis. Contact park headquarters for more information.

**13.45(c) Designated areas where personal property may not be left unattended for any time period, limits on amounts and types, manner in which property is stored**

No designated areas.

**13.50(h) Facility closures and restrictions**

No restrictions at present.

**13.46 Closures or restrictions to the use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses**

See also 36 CFR 2.16, 2.17, 2.18, 3.6, 4.10, 4.30; 43 CFR 36.11(c)-(e).

**13.122 Established conditions for removal of cabin for which a cabin permit has been denied, expired, or revoked**

No conditions established at present (may require access permit).

**13.160 Designated existing cabins, shelters or temporary facilities that may be shared for subsistence uses without a permit**

No designations at present.

**13.166 Established conditions and standards governing the use and construction of temporary structures and facilities for subsistence purposes, published annually**

No conditions or standards established at present.

**13.170 Designated cabins or other structures for general public use**

No cabins or other structures designated for public use.

*NPS cabins are currently available for emergency use only.*

**13.172 Established conditions and allocation system to manage the use of designated public use cabins**

Not applicable.

**13.188(b) Established conditions for removal of temporary facility used in excess of 14 days**

Individuals must remove facility, all personal property, and return the site to its natural condition.

*These conditions are intended to protect the park from impacts to vegetation and soil and to ensure that personal items are not left in the park.*

**13.485(a)(1) Permit specifications for harvesting standing timber greater than 3" diameter for subsistence purposes (house logs & firewood)**

The superintendent may allow subsistence harvest of trees greater than 3" subject to the terms and conditions of a permit.

*The above restriction serves to minimize impact to park resources, ensure that natural biodegradation processes are unimpaired, and protect against overharvest.*

**13.485(a)(2) Restrictions on cutting of timber less than 3" in diameter for subsistence purposes**

No restrictions at present.

**43 CFR, PART 36 TRANSPORTATION AND UTILITY SYSTEMS (Access Regulations)**

**36.11(c) Temporary closures to the use of snowmachines for traditional activities**

No closures at present. See also 2.18.

**36.11(d) Temporary closures to the use of motorboats**

No closures at present. See also 3.3, 3.6.

**36.11(e) Temporary closures to the use of non-motorized surface transportation**

No closures at present. See also 2.16, 3.3, 3.6.

**36.11(f)(1) Temporary closures to landing fixed-wing aircraft**

No closures at present.

**36.11(f)(3)(ii) Established procedure for salvaging and removing downed aircraft**

A permit is required from the superintendent before downed aircraft may be salvaged and removed from the NPS lands; violation of the terms and conditions of the permit is prohibited.

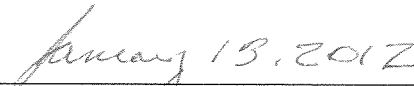
*This requirement allows the superintendent to establish terms and conditions for salvage operations as necessary to protect resources, provide for public safety, and minimize impacts on visitors.*

**36.11(g)(2) Use of off-road vehicles (ORV) on existing trails**

No trails designated for ORV use except those designated in the Anaktuvuk Pass Land Exchange Legislation. Contact park headquarters for further information on these designated trails. See also 4.10.



**Superintendent**



**Date**

**Attachments**

2.10 Food Storage Determination

3.14 Conditions for removing sunken, grounded, or disabled vessels

13.40 Temporary restrictions to taking wildlife (black bears)

## Determination of Need for a Restriction, Condition, Public Use Limit, or Closure

Subject: Food Storage

Pursuant to Title 36 of the Code of Federal Regulations, Section 1.5 (c) and 2.10 (d), the Superintendent of Gates of the Arctic National Park & Preserve has determined that in order to protect public safety and prevent adverse impacts to wildlife, conditions are placed on storage of food, garbage, lawfully taken fish or wildlife, and equipment used to cook or store food throughout the park.

The reasons for this restriction are as follows:

1. Wildlife in a natural ecosystem are adapted to subsist on natural foods. Obtaining human food may adversely affect behavior of individuals and the health of wildlife populations. Because natural processes are expected within NPS areas, wildlife should not obtain food from people.
2. Both black and brown bears are common throughout parklands and are readily attracted to even small quantities of human food. They are very curious and intelligent, and will commonly open or enter containers, tents, and structures.
3. Bears are extremely susceptible to conditioning to human food sources. Once they have learned to associate a site or item (e.g. tent, kayak, boat, etc.) with acquisition of food, they may return to that source repeatedly for further food rewards.
4. It does not matter whether the material is fresh, dry, powered, canned, etc. Once a curious bear has obtained a positive food reward, it will return and / or continue to seek out further rewards in similar situations.
5. Due to the transfer of knowledge from sows to cubs and the long life span of individual bears, young bears exposed to human foods may display unnatural and unacceptable behavior for decades.
6. Bears which become conditioned to human food are likely to be killed by humans in defense of life or property inside the parklands or on adjacent lands.
7. Humans are at risk of injury or death when bears attempt to obtain food from tents, packs, vessels, or other similar areas.

The reasons less restrictive measures will not be effective are as follows:

1. Educational efforts regarding proper food storage and disposal of food and garbage have been undertaken by state and federal agencies in Alaska and in other western states for many years. These efforts have undoubtedly reduced food conditioning and wildlife/human conflicts.
2. Recognizing that variations in the environment and recreational activities require multiple food storage options, NPS managers have undertaken the following to assist visitors and make these conditions less onerous by making bear resistant containers (BRCs) available at NPS headquarters and field locations.
3. Despite these efforts, NPS managers repeatedly encounter situations in which food or garbage is improperly stored throughout the parklands.

4. The food storage conditions under this section allow for a wide variety of storage options, including free loans of portable BRC units, to make compliance less onerous.
5. We have considered the use of the State of Alaska regulations which prohibit intentionally or negligently feeding wildlife or leaving human food, pet food, or garbage in a manner that attracts wildlife. While NPS officers cannot enforce this state regulation directly, the NPS considered this language for the compendium. Given the NPS mandate to protect wildlife, the NPS prefers a proactive approach designed to prevent wildlife from obtaining food from humans, intentionally or unintentionally.
6. Given the lack of complete compliance with educational efforts, the flexibility in compliance options, and the effort made by park managers to provide free equipment to promote compliance, these conditions are the least restrictive required to fulfill the parklands mission of protecting wildlife and human safety.

## Determination of Need for a Restriction, Condition, Public Use Limit, or Closure

Subject: Conditions for removing sunken, grounded, or disabled vessels

Pursuant to Title 36 of the Code of Federal Regulations, 1.5(c) and 3.14(a), the Superintendent of Gates of the Arctic National Park and Preserve is requiring a permit before sunken, grounded, or disabled vessels may be removed from the preserve if the operator is unable to do so without risking damage to resources or endangering public safety.

The reasons for this restriction are as follows:

- This requirement allows the Superintendent to establish terms and conditions for salvage operations as necessary to protect resources, provide for public safety, and minimize impacts on visitors.

The reasons less restrictive measures will not be effective are as follows:

- How to protect resources, public safety, and minimize visitor impact when removing a disabled vessel needs to be addressed on a case by case basis since the circumstances involved in each incident is unique. A permit allows the NPS and the boater maximum flexibility to address the specific circumstances at hand when removing disabled, grounded or sunken vessels.

## Determination of Need for a Restriction, Condition, Public Use Limit, or Closure

Subject: Temporary closures or restrictions to taking wildlife (black bears)

Pursuant to Title 36 of the Code of Federal Regulations, sections 13.40 and 13.50, the Superintendent of Gates of the Arctic National Park and Preserve has determined it is necessary to restrict the take of black bears using artificial light at den sites and the take of black bear cubs and sows with cubs at den sites in the Preserve. These changes are in response to recent changes in state law. The NPS has consulted with the State of Alaska on several occasions, held public hearings in Allakaket and Fairbanks, and accepted written comments.

### **13.40(e) Temporary closures or restrictions to the taking of fish and wildlife**

- From October 15 through April 30, artificial light may not be used to take a black bear at a den site except to retrieve a dead bear or dispatch a wounded bear as authorized by state law.
- From October 15 through April 30, a person may not take a cub bear or a female bear accompanied by a cub bear at a den site.

The reasons for these restrictions are:

During the 2008 Southeast Region Board of Game (BOG) meeting, the BOG made an exception to two long standing general prohibitions regarding the take of black bears. The BOG authorized all state residents to use artificial light to take black bears at den sites and to take black bear cubs and sows with cubs at den sites under customary and traditional use activities from October 15 to April 30 in Unit 19A , portions of Unit19D and in Units 21B, 21C, 21D, 24, and 25D. The NPS did not immediately recognize that NPS lands were affected and consequently did not comment on these proposals. When the regulation was promulgated, the NPS identified small portions of two National Preserves in Units 19D and 24 that were included in these authorizations.

Federal law provides that the fundamental purpose of national park areas is conservation of park resources and values, including the scenery, the natural and historic objects, and wildlife therein and prohibits impairment of park resources or values. Under NPS Management Policies, activities that may result in impairment include those that impact a “resource or value whose conservation is . . . key to the natural . . . integrity of the park or to provide opportunities for enjoyment of the park.” Because the impact threshold at which impairment occurs is not always readily apparent, the NPS policies require managers to avoid unacceptable impacts to park resources and values. Unacceptable impacts are those that are inconsistent with park purposes and values; diminish opportunities for current or future generations to enjoy, learn about, or be inspired by park resources or values; or those that unreasonably interfere with other appropriate uses.



In addition to the above, the legislated purposes of Denali and Gates of the Arctic include the protection of habitat for and populations of fish and wildlife. Congress directed the NPS to manage National Preserves in the same manner as National Parks with the exception that sport hunting and trapping are authorized. National Parks areas are closed to the taking of wildlife except as specifically authorized by Congress. Congress authorized taking of wildlife in NPS Preserves for Title VIII subsistence uses, trapping, and sport hunting. A statement in the Congressional Record on ANILCA provides that “[t]he standard to be met in regulating the taking of fish and wildlife and trapping is that the preeminent natural values of the Park System shall be protected in perpetuity and shall not be jeopardized by human uses. These are very special lands and this standard must be set very high: the objective for Park System lands must always be to maintain the health of the ecosystem and the yield of fish and wildlife for hunting and trapping must be consistent with this requirement.” The State’s general hunting program applies in NPS Preserves to the extent that it is consistent with NPS laws and regulations. The NPS may close or restrict the take of wildlife in Preserves pursuant to ANILCA section 1313 and federal regulations at 36 CFR 13.40-13.50.

The State of Alaska provisions that allow use of artificial light to take denning black bears and the take of cubs and sows with cubs at den sites are unacceptable impacts to the purposes and values of these Preserves. These hunting practices have been prohibited since Statehood with limited exceptions. Consistent with sound management principles and conservation of wildlife, practices that disturb animals when they are in a vulnerable state—in their dens, when reproducing, injured, or very young—are usually avoided. Accordingly, these practices are generally prohibited under federal subsistence and the state’s general hunting regulations.

Continuation of the natural process is expected in park areas except as specifically authorized by Congress. The take of denning black bear sows and cubs and use of artificial light for these purposes sanction practices that have the potential to impact the natural integrity of a native species. The practical effect of these allowances, open to all Alaska residents, is increased efficiency for taking predator species and has potential to create pressures on the natural abundance, behavior, distribution, and ecological integrity of these native wildlife species. The written finding of the Board of Game (2006-164-BOG, General Bear Management) is to protect sows and cubs from harvest, “unless it is necessary to consider methods to increase bear harvests as a part of a bear predator control program.” State laws or actions that seek to manipulate natural wildlife populations for human consumption, or have that practical effect, are inconsistent with NPS statutes, regulations, and policies and exceed Congress’s authorization in ANILCA.

The NPS recognizes and supports subsistence by qualified rural residents, sport/recreational hunting, and trapping. These activities are important heritage activities in NPS Preserves in Alaska. However, introducing NPS Preserves to these historically illegal methods of harvest and liberalizing the harvest of black bears to include cubs and sows with cubs, are unacceptable impacts which exceed the authorization of sport hunting. This compendium provision recognizes that State and Federal mandates differ in this case and adopts a federal restriction for NPS Preserves to comply Federal law and policy for park areas. The NPS remains committed to managing park resources and values in a way that avoids unnecessary interference with State management of resident wildlife resources.

The reasons less restrictive measures will not be effective are as follows:

- The NPS consulted with the State of Alaska and made a proposal to the BOG to exempt NPS Preserves from these authorizations. At the March 2010 BOG meeting, the BOG voted not to adopt the NPS proposal. These restrictions are necessary in absence of a change in State law. The NPS intends to propose a regulation to permanently address this issue.